

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 23-21

Date Received: November 29, 2022

Title: Recertification and Bundling Changes- Guidance

Initiator Name: Tim Eckert

Initiator Organization Name / Routing Code: Procurement Policy Branch, AAP-110

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Policy and Guidance: (Please check only one box)

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|---|--|
| <input type="checkbox"/> Policy | <input type="checkbox"/> Procurement Tools and Resources |
| <input checked="" type="checkbox"/> Guidance | <input type="checkbox"/> Real Property Templates and Samples |
| <input type="checkbox"/> Procurement Samples | <input type="checkbox"/> Procurement Clauses |
| <input type="checkbox"/> Procurement Templates | <input type="checkbox"/> Real Property Clauses |
| <input type="checkbox"/> Procurement Forms | <input type="checkbox"/> Other Tools and Resources |
| <input type="checkbox"/> Procurement Checklists | |

Summary of Change:

(1) Recertification language added to Guidance to clarify recertification requirements consistent with clause, and (2) Addition of bundling threshold of \$250,000 for task and delivery orders.

Reason for Change:

(1) Clarification of recertification requirements consistent with changes to clause 3.6.1-15 related to long-term contracts, and (2) Proper control of possible bundling on task and delivery orders.

Development, Review, and Concurrence: AAP-20/AGC-500/AAQ/AAP-110

Target Audience: Program office and contracting personnel

Briefing Planned: No.

ASAG Responsibilities: ASAG electronically approved on 12/21/22.

Section / Text Location:

T3.6.1A.5 and T3.6.1A.6 (corresponding changes to AMS Procurement-Related Thresholds and Review Requirements and to an AMS clause).

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links: https://fast.faa.gov/PPG_Procurement_Guidance.cfm

Attachments: Redline and final documents.

Other Files: N/A.

Redline(s):

Section Revised: T3.6.1 – Small Business Program**Procurement Guidance - (~~10/2022~~1/2023)**

[T3.6.1 - Small Business Program](#) Revised 7/2020

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Revised 10/2021

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Revised 10/2022

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[7 Mentor-Protégé](#) Revised 7/2021

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[9 Tiered Evaluations](#) Revised 1/2021

[B Clauses](#) Revised 10/2006

[C Procurement Forms](#) Revised 9/2021

[D Procurement Samples](#) Revised 9/2021

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[F Procurement Tools and Resources](#) Revised 10/2021

[G Appendix](#) Revised 10/2021

T3.6.1 - Small Business Program Revised 7/2020

A Small Business Program 7/2020

1 Procurement Team Responsibilities in Support of the Small Business Program Revised 10/2021

- a. Effective implementation of the FAA's small business programs in their contracting actions, including achieving program goals;
- b. Develop small businesses by taking all reasonable action to increase small business participation in the FAA's procurements (including subcontracts);
- c. Consider the feasibility of breaking out requirements to increase opportunities for small businesses to successfully compete for prime contracts;
- d. Consider the extent of small business participation in contract performance during procurement planning;
- e. Obtain guidance from the FAA Small Business Program (AAP-20) liaison as it relates to small business issues. In doing so, the service teams must coordinate with representatives of the cognizant local AAP-20 staff as soon as requirements estimated to exceed \$250,000 are defined to receive assistance in identifying opportunities for small businesses. This requirement to coordinate does not apply to contract modifications or requirements having an anticipated dollar value exceeding \$10,000 but not over \$250,000 that are set-aside for Socially and Economically Disadvantaged Business (SEDB) 8(a), Service-Disabled Veteran-Owned Small Business (SDVOSB), Historically Underutilized Business Zone (HUBZone) small businesses, Small Disadvantaged Businesses (SDB), Women-Owned Small Business (WOSB) firms, and/or Economically Disadvantaged Women-Owned Small Business (EDWOSB) firms or a small business if no SEDB 8(a), SDVOSB, HUBZone small businesses, SDB, WOSB, and/or EDWOSB firms that are competitive in terms of market prices, quality, and delivery can be identified. Use the Small Business Set-Aside Determination and Coordination Form located in Procurement Templates to coordinate with AAP-20 and attach (as applicable) the statement of work, single source rational basis documentation, fully executed single source justification, market survey and market analysis to the form (see also AMS Policy on Set-Asides for use of this form). In addition, any requirements that had previously been procured through the Small Business/SEDB/8(a) Program, but not currently proposed for reprocurement through the Small Business/SEDB/8(a) program must be approved by the cognizant local AAP-20 staff. If agreement cannot be reached, the FAA Acquisition Executive's approval is required prior to any public notice or solicitation of the requirement; and
- f. Participate and assist in the development of small business conferences and outreach efforts sponsored by AAP-20.

2 The FAA Small Business Program (AAP-20) and Liaison Representative Involvement Revised 10/2022

The Small Business Program (AAP-20) maintains a direct working relationship with the procurement teams. When appropriate, AAP-20 interacts with all procurement teams in the following areas to provide support and ensure effective and consistent program implementation:

- a. Participates in procurement workshops to increase access to and award of FAA contracts by small businesses;
- b. Participates in acquisition and procurement planning meetings and other scheduled meetings with the procurement team as advisors;
- c. Identifies potential small businesses that qualify for a particular procurement;
- d. Provides the procurement team with source lists of small businesses;
- e. Ensures that the source selection criteria used to select firms for award is fair, consistent and does not limit opportunities for small businesses;
- f. Provides advertising recommendations to the integrated products teams to ensure all requirements are being advertised in media accessible to small businesses;
- g. Responds to written and telephone inquiries from small businesses and small businesses owned and controlled by a socially and economically disadvantaged individuals regarding procurement opportunities with FAA;
- h. Reviews final source lists to ensure an adequate representation of small businesses;
- i. Reviews questions presented at conferences, preparing answers to questions submitted by small businesses, interacting with the integrated product teams for distribution of responses to all potential contractors;
- j. Reviews annual representations and certifications and accompanying documentation using official records found on the System for Award Management (SAM) and VetBiz;
- k. Utilizes the Small Business Administration's Small Business websites to support market Research;
- l. Reviews subcontracting plans and AMS Small Business Subcontracting Plan Checklists submitted by COs to ensure subcontracting plans are compliant with the requirements of AMS Clause 3.6.1-4, Small Business Subcontracting Plan;
- m. Ensures that small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals are entered into the AAP-20 database;
- n. Assists in the proposal evaluation process as a non-voting member of the evaluation team;
- o. Conducts on-site pre-award verifications to verify that a sufficient percentage of the ownership, as

well as the business control and management of the firm is vested in a disadvantaged group member(s), service-disabled veteran(s) or woman (women) and verify compliance with small business program requirements;

p. Participates in debriefings of unsuccessful small businesses to ensure fair and equitable treatment to all firms;

q. Participates in postaward meetings with successful offerors to ensure a clear understanding of small business program guidelines and engagement of small businesses as subcontractors; and

r. Conducts on-site compliance reviews of contractors with subcontracting plans to ensure compliance with program requirements.

3 Prime Contracting with Small Business Revised 10/2022

a. While the use of small business set-asides as a method of procurement is not mandatory, small businesses must be afforded reasonable opportunities to compete for all procurements. All procurements must first be considered for set-aside before procuring the product or service on an unrestricted basis. Thus, procurement teams should take the following actions when appropriate:

(1) Set-aside procurements for competition in accordance with the policies and guidance contained in Acquisition Management System (AMS) Section 3.2.2 Source Selection;

(2) Consider the capabilities of small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals during the screening phase of each procurement;

(3) Breakout large requirements (if severable) into smaller sized requirements to provide for greater small business participation;

(4) Plan procurements of supplies and services so that more than one small business firm may perform the work (if the work exceeds the amount that which a single small business can handle);

(5) Ensure that delivery schedules are realistic to encourage small business participation to the extent consistent with actual requirements of FAA;

(6) Encourage teaming relationships among small and large businesses to enhance competition; and

(7) Utilize small businesses on qualified vendor lists on a rotational basis to increase opportunities to the greatest number of small businesses.

b. Conducting set-asides with small businesses, small businesses owned and controlled by socially

and economically disadvantaged individuals (8(a) Certified), service-disabled veteran owned small businesses, Historically Underutilized Business Zone (HUBZone) small businesses, small disadvantaged businesses, and Women Owned Small Businesses:

- (1) All set-asides are to be conducted directly with small businesses independent of the Small Business Administration (SBA);
- (2) Procurements may be set-aside exclusively for small businesses;
- (3) Procurements may also be set-aside exclusively for competitive award among small socially and economically disadvantaged businesses (SEDBs) that are expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) program. Each firm claiming 8(a) status is required to provide a copy of its SBA 8(a) certification letter to the Contracting Officer (CO) as evidence of eligibility. A firm's 8(a) certification may also be verified on the firm's Dynamic Small Business Search (DSBS) profile at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. There is no requirement for SBA's approval to make award to the SEDB;
- (4) Industry should be notified of the applicable North American Industry Classification System (NAICS) code representing the predominant portion of the overall requirement in the public announcement to ensure small business size eligibility requirements are timely known;
- (5) Procurements may be set-aside exclusively for competitive award among service-disabled veteran owned small businesses (SDVOSB) as defined by 38 U.S.C. 101. Each firm claiming SDVOSB status is required to complete the electronic annual representations and certifications via SAM at <https://www.sam.gov>. to self-certify its eligibility. The firm must also be verified by the Department of Veterans Affairs and appear in the Vendor Information Pages on the Veteran Affairs website;
- (6) There is no requirement to obtain the SBA's or Veteran Administration's approval to make award to the selected SDVOSB. However, unless the firm is designated as a SDVOSB on the VA website, the CO must not make an award to the firm as a SDVOSB;
- (7) Procurements may be set-aside exclusively for competitive award among HUBZone small businesses that are expressly certified by the Small Business Administration (SBA) for participation in the HUBZone program. Each firm claiming HUBZone status is required to complete the electronic annual representations and certifications via SAM at <https://www.sam.gov> to self-certify its eligibility. Certification can also be verified at https://web.sba.gov/pro-net/search/dsp_dsbs.cfm. There is no requirement for SBA's approval to make award to the selected HUBZone small business;
- (8) Procurements may be set-aside exclusively for competitive award among Women-Owned Small Business (WOSB) that are either certified by the SBA or by a third-

party certifier approved by the SBA and are eligible under the WOSB Program. Program participants' WOSB certification must be on the firm's Dynamic Small Business Search (DSBS) profile (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). WOSB concerns are eligible under the WOSB Program when the acquisition is assigned a North American Industry Classification System (NAICS) code in which SBA has determined that WOSB concerns are underrepresented or substantially underrepresented in Federal procurement. These NAICS are listed by the SBA on their website (see <https://www.sba.gov/document/support--qualifying-naics-women-owned-small-business-federal-contracting-program>). There is no requirement for SBA's approval to make award to the selected WOSB;

(9) Procurements may be set-aside exclusively for competitive award among Economically Disadvantaged Women-Owned Small Business (EDWOSB) that are either certified by the SBA or by a third-party certifier approved by the SBA and are eligible under the WOSB Program. Program participants' EDWOSB certification must be on the firm's Dynamic Small Business Search (DSBS) profile (https://web.sba.gov/pro-net/search/dsp_dsbs.cfm). EDWOSB concerns are eligible under the WOSB Program when the acquisition is assigned a North American Industry Classification System (NAICS) code in which SBA has determined that EDWOSB or WOSB concerns are underrepresented or substantially underrepresented in Federal procurement. These NAICS are listed by the SBA on their website (see <https://www.sba.gov/document/support--qualifying-naics-women-owned-small-business-federal-contracting-program>). There is no requirement for SBA's approval to make award to the selected EDWOSB;

(10) Procurements may also be set-aside exclusively for competitive award among Small Disadvantaged Businesses (SDB). Each firm claiming SDB status is required to complete the electronic annual representations and certifications via SAM at <https://www.sam.gov>, to self-certify its eligibility;

and

(11) There is no order of precedence among the SEDB 8(a) certified, HUBZone, SDVOSB, EDWOSB, WOSB, or SDB for set-asides. Results of market research and progress in the achievement of the agency's socio-economic goals should be considered when determining which set-aside to utilize. However, when contemplating a SDB set-aside, a SEDB 8(a) certified small business set-aside must first be considered. Also, any requirements that had previously been procured through SEDB 8(a) certified small business (competitive set-aside or noncompetitive) but not currently proposed for reprocurement through SEDB 8(a) certified small business must be approved by the cognizant local AAP-20 staff.

(12) *Combined Set-Asides* Procurements may also be set-aside for competitive award among offerors that qualify as both SEDB 8(a) certified and SDVOSB. The requirements of section b are applicable to such combined set-asides.

(13) A procurement may not be set-aside if:

(a) there is no reasonable expectation of obtaining offers from two or more responsible SEDB(8(a)) concerns, small business concerns, SDVOSB, HUBZone small business concerns, small disadvantaged business concerns, WOSB concerns, or EDWOSB concerns that are competitive in terms of market prices, quality and delivery; or

(b) it is in the best interest of the FAA to contract with a single source or noncompetitively and the rational basis is documented; or

(c) extension of the current services.

c. Noncompetitive Awards to SEDB (8(a)), SDVOSB, HUBZone, WOSB, and EDWOSB Firms (see AMS Policy Section 3.6.1.3 for applicable thresholds). In addition to meeting eligibility requirements described above, a rational basis for the decision to award a noncompetitive SEDB (8(a)), SDVOSB, HUBZone, WOSB, or EDWOSB procurement must be documented. Procurement decision makers should consider potential SEDB (8(a)), SDVOSB, HUBZone, WOSB, or EDWOSB sources of supply contained in the Dynamic Small Business Search (DSBS), System for Award Management (SAM), and VA Vendor Information Pages Vetbiz website available on the Small Business Program's (AAP-20) website. The ownership and control of the sources on this website have been verified by Veterans Affairs (VA). The public announcement requirements of the AMS Section 3.2.1.3.11 are not applicable to noncompetitive awards to SEDB (8(a)), SDVOSB, HUBZone, WOSB, or EDWOSB firms if the product being procured is not available from Federal Prison Industries.

There is no requirement to obtain the SBA's or Veteran Administration's approval to make award to the selected SDVOSB. However, unless the firm is designated as a SDVOSB on the VA website, the CO must not make an award to the firm as a SDVOSB.

d. Noncompetitive awards above \$25 million to SEDB 8(a) firms: For such awards, the following additional requirements apply:

(1) The program official must prepare a written justification at a minimum documenting the rational basis for the award as follows:

(a) Description of the supplies/services being purchased;

(b) Determination that a noncompetitive contract is in the best interests of FAA;

(c) Determination that the anticipated cost of the contract will be fair and reasonable; and

(d) Applicable AMS references.

(2) The CO and program official must approve the justification, with concurrence by legal

counsel (on the justification) and AAP-20 (on the Small Business Set-Aside Determination and Coordination form) before negotiations on the contractor's proposal.

4 Subcontracting with Small Business Revised 10/2022

a. *Definitions.* As used in this subsection —

(1) "Commercial item" means a product or service that satisfies the definition of commercial item in Appendix C of the FAA Acquisition Management System Policy.

(2) "Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

(3) "Electronic Subcontracting Reporting System (eSRS)" means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at: <http://www.esrs.gov/>.

(4) "Master subcontracting plan" or simply "subcontracting plan" means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master subcontracting plan has been approved.

(5) "Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

b. *Incorporation and Review of Subcontracting Plans.*

(1) *Incorporation.* In procurements estimated to exceed \$750,000 (\$1,500,000 for construction), the CO must incorporate subcontracting provisions (including attainable and reasonable subcontracting goals for the participation of small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, HUBZone small businesses, women-owned small businesses and service disabled veteran owned small businesses). A sample Master Subcontracting Plan to satisfy the applicable requirements of AMS clause 3.6.1-4, Small Business Subcontracting Plan, is located in FAST under Procurement Samples. Subcontracting provisions are not required for; (1) commercial items; (2) when there are no subcontracting possibilities; (3) when the contract, together with all of its subcontracts, will be performed entirely outside of the United States and its outlying areas; or (4) when the prime contractor is a small business or a small business owned and controlled by a socially and economically disadvantaged individual. The contract should include requirements for contractors to periodically report data on subcontracting accomplishments in sufficient detail to determine the extent of the contractor's attainment of subcontracting goals.

(2) *Review.* Prior to contract award or modification to a contract requiring a subcontracting plan, upon collecting a subcontracting plan, COs must review the subcontracting plan and

assess its viability using the AMS Small Business Subcontracting Plan Checklist located in FAST under Procurement Checklists. COs must then send the subcontracting plan and completed Checklist to AAP-20. AAP-20 will review the documents and return them to the CO with an indication of concurrence or non-concurrence. Only upon AAP-20 concurrence may the CO proceed in processing the contract award or modification. In an instance of non-concurrence, AAP-20 will provide the CO comments stating the deficiencies in the subcontracting plan and recommend corrective action. If agreement cannot be reached, only with approval from the Chief of the Contracting Office (COCO) may the award of a contract or modification proceed.

c. The following subcontracting considerations should be used in procurements that have subcontracting provisions as appropriate:

- (1) Establishing goals requires much care to ensure that they are realistic and motivate the contractor. Percentage goals that are unrealistically low will only create a false sense of success and should be avoided. Likewise, goals that are too high can be counterproductive.
- (2) Subcontracting requirements should be a subject for review and discussion at postaward conferences. It is important to monitor contractor performance in meeting goals. This is particularly important early in the life of the contract when the majority of subcontracts will be awarded. Prompt corrective action should be taken if it appears that a contractor will not meet its goal (see paragraph (d) *Compliance with the Subcontracting Plan*, for additional guidance).
- (3) The procurement team should notify the Small Business Program (AAP-20) or Small Business Liaison Representative of the opportunity to review the subcontracting proposal in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations prior to award. The CO is responsible for ensuring that the contractor attains all subcontracting goals. Subcontracting data (accomplishments) must be timely reported in eSRS.
- (4) The CO should provide a listing of potential small business subcontractors for information purposes. The FAA should not make any warranty as to their capabilities or abilities to perform any portion of the contract. The listing may be obtained from the AAP-20 Small Business Liaison Representative.
- (5) Evaluate the percentage and dollar volume of planned subcontracting and total dollar volume of expected awards to small business subcontractors (including small businesses owned and controlled by socially and economically disadvantaged individuals, HUBZone, women- owned and service-disabled veteran owned concerns).
- (6) There should be separate subcontracting goals for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals, HUBZone, women-owned and service-disabled veteran owned concerns expressed as a percentage of total planned subcontracting dollars.

- (7) Identify principal product and service areas to be subcontracted and identify those areas where it is planned to use small business, small businesses owned and controlled by a socially and economically disadvantaged individual, HUBZone, women-owned and service-disabled veteran owned subcontractors.
- (8) Review via SAM representations and certifications of principal proposed small business and small disadvantaged business subcontractors, including the type of product or service and the dollar value to be awarded to each principal subcontractor. This information is to be used to assist the CO in making a determination as to the acceptability of the proposed subcontracting goals. The contractor is not contractually bound to make awards to the designated subcontractors nor is the Government approving the subcontracts.
- (9) Evaluate extent of complexity and variety of work to be performed by small businesses with greater weight on businesses performing substantive or high technology components or services. In this way, FAA can ensure that small businesses will receive technologically challenging or a meaningful portion of the overall contract.
- (10) Include monetary incentives for subcontracting such as including an award fee provision to provide incentives for providing meaningful, technically substantive subcontracting work to small businesses. Under this approach subcontracting proposals that provide appropriate percentage commitments would be accepted, but an award fee contract line item would be incorporated as part of the contract. Receipt of the award fee would be after either preliminary design review, critical design review, or other appropriate milestones. The percentage amount of the award fee pool would be based on the extent the contractor has provided meaningful, technically substantive work to eligible small businesses within the previously accepted percentage goals.
- (11) Evaluate past performance related to the offeror's compliance with prior subcontracting proposals and subcontracting plans, with greater weight on subcontracting proposals received from offerors that have successfully attained or exceeded subcontracting goals in the past.
- (12) Evaluate level of participation of small businesses evaluated based on the percentage of the total contract value (if appropriate). This is particularly recommended for requirements traditionally performed by small businesses that may be displaced due to the bundling of smaller set-aside requirements into one larger contract.
- (13) Contractors should be required to flow down similar subcontracting requirements under the prime contract to all subcontractors (except small businesses).
- (14) If an offeror submits an offer that does not address each of the subcontracting provisions, the CO should advise the offeror of the deficiency and request submission of a revised offer by a specific date; and (15) If the offeror does not submit an offer incorporating the subcontracting requirements within the time allotted, the offeror should be ineligible for award.

d. Compliance with the Subcontracting Plan.

(1) Maximum practicable utilization of small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors in Government contracts is a matter of national interest with both social and economic benefits. When a contractor fails to make a good faith effort to comply with a subcontracting plan, these objectives are not achieved, and liquidated damages may be assessed.

(2) In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions, consistent with the information and assurances provided in its plan. The fact that the contractor failed to meet its subcontracting goals does not, in and of itself, constitute a failure to make a good faith effort.

For example, notwithstanding a contractor's diligent effort to identify and solicit offers from any of the small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, factors such as unavailability of anticipated sources or unreasonable prices may frustrate achievement of the contractor's subcontracting goals. The contracting officer may consider any of the following, though not all inclusive, to be indicators of a good faith effort:

(i) Breaking out work to be subcontracted into economically feasible units, as appropriate, to facilitate small business participation.

(ii) Conducting market research to identify potential small business subcontractors through all reasonable means, such as searching SAM, posting notices or solicitations on SBA's SUBNet, participating in business matchmaking events, and attending preproposal conferences.

(iii) Soliciting small business concerns as early in the acquisition process as practicable to allow them sufficient time to submit a timely offer for the subcontract.

(iv) Providing interested small businesses with adequate and timely information about plans, specifications, and requirements for performance of the prime contract to assist them in submitting a timely offer for the subcontract.

(v) Negotiating in good faith with interested small businesses.

(vi) Directing small businesses that need additional assistance to SBA.

(vii) Assisting interested small businesses in obtaining bonding, lines of credit, required insurance, necessary equipment, supplies, materials, or services.

(viii) Utilizing the available services of small business associations; local, state, and Federal small business assistance offices; and other organizations.

- (ix) Participating in a formal mentor-protégé program with one or more small business protégés that results in developmental assistance to the protégés.
 - (x) Although failing to meet the subcontracting goal in one socioeconomic category, exceeding the goal by an equal or greater amount in one or more of the other categories.
 - (xi) Fulfilling all of the requirements of the subcontracting plan.
- (3) When considered in the context of the contractor's total effort in accordance with its plan, the contracting officer may consider any of the following, though not all inclusive, to be indicators of a failure to make a good faith effort:
- (i) Failure to attempt through market research to identify, contact, solicit, or consider for contract award small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns, through all reasonable means including outreach, industry days, or the use of Federal systems such as SBA's Dynamic Small Business Search or SUBNet systems.
 - (ii) Failure to designate and maintain a company official to administer the subcontracting program and monitor and enforce compliance with the plan.
 - (iii) Failure to submit an acceptable ISR, or the SSR, using the eSRS, or as provided in agency regulations, by the report due dates specified in 3.6.1-4, Small Business Subcontracting Plan.
 - (iv) Failure to maintain records or otherwise demonstrate procedures adopted to comply with the plan including subcontracting flowdown requirements.
 - (v) Adoption of company policies or documented procedures that have as their objectives the frustration of the objectives of the plan.
 - (vi) Failure to pay small business subcontractors in accordance with the terms of the contract with the prime contractor (see AMS Clause 3.6.1-4 section (d)(15) and AMS Clause 3.6.1-5).
 - (vii) Failure to correct substantiated findings from Federal subcontracting compliance reviews or participate in subcontracting plan management training offered by the Government.
 - (viii) Failure to provide the contracting officer with a written explanation if the contractor fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause 3.6.1-4 section (d)(12).
 - (ix) Falsifying records of subcontract awards to small business concerns.

(4) *Documentation of good faith effort.* If, at completion of the basic contract or any option, or in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, a contractor has failed to comply with the requirements of its subcontracting plan, which includes meeting its subcontracting goals, the contracting officer shall review all available information for an indication that the contractor has not made a good faith effort to comply with the plan. If no such indication is found, the contracting officer shall document the file accordingly.

(5) *Notice of failure to make a good faith effort.* If the contracting officer determines that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall give the contractor written notice in accordance with 3.6.1-6 Liquidated Damages - Subcontracting Plan, specifying the material breach, which may be included in the contractor's past performance information, advising the contractor of the possibility that the contractor may have to pay to the Government liquidated damages, and providing a period of 15 business days (or longer period as necessary) within which to respond. The notice shall give the contractor an opportunity to demonstrate what good faith efforts have been made before the contracting officer issues the final decision and shall further state that failure of the contractor to respond may be taken as an admission that no valid explanation exists.

(6) *Payment of liquidated damages.* If, after consideration of all the pertinent data, the contracting officer finds that the contractor failed to make a good faith effort to comply with its subcontracting plan, the contracting officer shall issue a final decision to the contractor to that effect and require the payment of liquidated damages in an amount stated. The contracting officer's final decision shall state that the contractor has the right to appeal.

(7) The amount of damages attributable to the contractor's failure to comply shall be in accordance with contract clause 3.6.1-6, Liquidated Damages -Subcontracting Plan. Liquidated damages shall be in addition to any other remedies that the Government may have.

5 Size Standards Verification Revised 9/2021/2023

a. To preserve the integrity and foster the objectives of the small business program, FAA must satisfy itself that the ownership, control, and day-to-day management requirements of the program are fulfilled. Each business claiming eligibility as a small business, small business owned and controlled by a socially and economically disadvantaged individual (8(a) certified), service-disabled veteran-owned small business, HUBZone small business, economically disadvantaged women-owned small businesses, or women owned small business must be required to provide evidence of eligibility prior to award. Prospective contractors must complete electronic annual representations and certifications via SAM at <https://www.sam.gov> and as directed in Guidance subparagraph T3.6.1A3(b). The FAA reserves the right to review and verify each firm's program eligibility. If the firm is not a small business as defined by the North American Industry Classification System (NAICS) code size standards, it will not qualify as a small business.

For set-asides restricted to small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals (8(a) certified), service-disabled veteran owned small businesses, HUBZone small businesses, economically disadvantaged women-owned small businesses, and/or women owned small businesses, verification will be performed using SAM and VetBiz (as required). The contracting officer will reference the date of verification in the contract file.

For agreements, (e.g. Basic Ordering Agreements, Memorandum of Agreements, etc.), the contractor retains eligible status for the term of the agreement. The contractor must recertify their business size prior to any extensions of the agreement including exercising an option period.

For contracts, a concern that represents itself as a small business and qualifies as small at the time it submits its initial offer (or other formal response to a solicitation) which includes price is generally considered to be a small business for the duration of the period of performance including options. Exceptions to this are as noted under clause 3.6.1-15 “Post-Award Small Business Program Re-representation”. For contracts that are extended beyond their period of performance (including options) under single source procedures, the awarding Contracting Officer of that extension modification must ensure the contractor re-certifies and the Federal Procurement Data System (FPDS) record for that modification reflects the contractors current business size prior to modification award. Note, extensions for up to six months under the clause at 3.2.4-34, Option to Extend Services, do not require contractor recertification.

b. For unrestricted procurements, the successful offeror must complete electronic annual representations and certifications at SAM.

c. When subcontracting goals are established for small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, HUBZone small businesses, small businesses owned and controlled by women, and service-disabled veteran owned small businesses, the prime contractor must verify a completed profile via SAM for such small businesses counted toward the successful offeror’s subcontracting goals.

d. A successful small business program rests with FAA’s ability to limit participation to bona fide small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, HUBZone small businesses, small businesses owned and controlled by economically disadvantaged women, small businesses owned and controlled by women, and service-disabled veteran owned small businesses, for they are the intended recipients of the agency’s procurement dollars earmarked for small business set-asides.

e. For the owner of the firm to be found to have controlling interest in the company, the following must exist:

- (1) The eligible owner holds the position of chairperson of the board, president or chief executive officer;
- (2) The eligible owner has the right to vote his or her shares or other equity interest to elect the majority of voting members of the board of directors or other governing

body;

(3) The eligible owner holds at least 51% unconditionally ownership and control of the operation; or

(4) The eligible owner has direct full-time responsibility for the day-to-day management of the business, as evidenced by all of the following:

(a) Directly related managerial or technical experience and competency;

(b) Establishment of company policies;

(c) Determination and selection of business opportunities;

(d) Supervision and coordination of projects

(e) Control of major expenditures;

(f) Hiring and dismissing key personnel;

(g) Marketing and sales decisions; and

(h) Signature on major business documents.

6 Contract Consolidation and Bundling Revised ~~10/2021~~1/2023

a. Definitions.

(1) Consolidation or consolidated requirement means a Screening Information Request (SIR) for a single contract, a multiple-award contract, a task order, or a delivery order to satisfy:

(a) Two or more requirements of the FAA for supplies or services that have been provided to or performed for the FAA under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which offers are solicited; or

(b) Requirements of the FAA for construction projects to be performed at two or more discrete sites.

(2) A “separate contract” as used in this subpart, means a contract that has been performed by any business, including small and other than small business.

(3) Bundling means a subset of consolidation that combines two or more requirements for supplies or services, previously provided or performed under separate smaller

contracts; into a ~~SIR for a~~ single contract, a multiple-award contract, or for a task /delivery order when a requirement previously provided or performed by a small business is proposed to be moved to a new or existing contract, to be awarded and performed in the United States, that is likely to be unsuitable for award to a small business concern (including socially and economically disadvantaged (8(a)), small disadvantaged, service-disabled veteran owned, HUBZone, economically disadvantaged women-owned and women-owned small businesses) due to:

(a) The diversity, size, or specialized nature of the elements of the performance specified;

(b) The requirements previously provided or performed under separate smaller contracts are being moved to a new or existing Large Business contract;

~~(b)~~(c) _____ The aggregate dollar value of the anticipated award;

~~(c)~~(d) _____ The geographical dispersion of the contract performance sites; or

~~(d)~~(e) _____ Any combination of the factors described in paragraphs (2) (a), (b), and ~~(e)~~ of this definition.

(4) A "separate smaller contract" as used in this subpart, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

b. General

(1) If the requirement is considered consolidated but not bundled, the FAA shall follow the guidance regarding consolidation in T3.6.1.A.6.c.

(2) If the requirement is considered both consolidated and bundled, the FAA shall follow the guidance regarding bundling in T3.6.1.A.6.d.

(3) The requirements of this subsection, T3.6.1.A.6 do not apply:

(a) If a cost comparison analysis will be performed in accordance with OMB Circular A-76;

(b) To orders placed under single-agency task-order contracts or delivery-order contracts, when the requirement was considered in determining that the consolidation or bundling of the underlying contract was necessary and justified; or

(c) To requirements for which there is a mandatory source (see T3.8.4), this exception does not apply:

- (i.) When any of the exceptions listed at T3.8.4.A.3.b apply; or
- (ii.) When the FAA may obtain from commercial sources, items listed on the “Procurement List” issued by The Committee for Purchase from People Who are Blind or Severely Disabled (see T3.8.A.5.e).

c. Consolidation

(1) Consolidation may provide substantial benefits to the Government. However, because of the potential impact on small business participation, before conducting an acquisition that is a consolidation of requirements with an estimated total dollar value exceeding \$10 million (including options), the applicable supervisory contracting officer shall make a written determination that the consolidation is necessary and justified, after ensuring that:

- (a) Market research has been conducted;
- (b) Any alternative contracting approaches that would involve a lesser degree of consolidation have been identified;
- (c) The determination is coordinated with the FAA Small Business Program (AAP-20);
- (d) Any negative impact by the acquisition strategy on contracting with small business concerns has been identified;
- (e) Steps are taken to include small business concerns in the acquisition strategy.

(2) The applicable supervisory contracting officer may determine that the consolidation is necessary and justified if the benefits of the acquisition would substantially exceed the benefits that would be derived from each of the alternative contracting approaches identified under paragraph (1)(b) of this subsection, including benefits that are quantifiable in dollar amounts as well as any other specifically identified benefits.

(3) Such benefits may include cost savings or price reduction and, regardless of whether quantifiable in dollar amount:

- (a) Quality improvements that will save time or improve or enhance performance or efficiency;

(b) Reduction in acquisition cycle times

(c) Better terms and conditions; or

(d) Any other benefit.

(4) *Benefits.*

(a) Benefits that are quantifiable in dollar amounts are substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to:

- (i.) 10% of the estimated contract or order value (including options) if the value is \$94 million or less; or
- (ii.) 5% of the estimated contract or order value (including options) or \$9.4 million, whichever is greater, if the value exceeds \$94 million.

(b) Benefits that are not quantifiable in dollar amounts shall be specifically identified and otherwise quantified to the extent feasible.

(c) Reduction of administrative or personnel costs alone is not sufficient justification for consolidation unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the consolidated requirements, as determined by the applicable supervisory contracting officer.

d. Bundling

- (1) This section is only applicable ~~to~~when bundling is contemplated for contracts with an estimated total dollar value exceeding \$10 million (including options~~;~~) or task/delivery orders exceeding \$250,000 where the circumstances as defined under T3.6.1A.6a(3) apply.
- (2) Bundling may provide substantial benefits to the FAA. However, because of the potential impact on small business participation, before conducting an acquisition strategy that involves bundling, the FAA shall make a written determination that the bundling is necessary and justified. A bundled requirement is considered necessary and justified if the FAA would obtain measurably substantial benefits as compared to meeting FAA requirements through separate smaller contracts or orders.
- (3) The FAA shall quantify the specific benefits identified through the use of market research and other techniques to explain how their impact would be measurably substantial.

- (4) Such benefits may include, but are not limited to:
- (a) Cost savings;
 - (b) Price reduction;
 - (c) Quality improvements that will save time or improve or enhance performance or efficiency;
 - (d) Reduction in acquisition cycle times, or
 - (e) Better terms and conditions.
- (5) Benefits are measurably substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to:
- (a) 10% of the estimated contract or order value (including options) if the value is \$94 million or less; or
 - (b) 5% of the estimated contract or order value (including options) or \$9.4 million, whichever is greater, if the value exceeds \$94 million.
- (6) Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least ten percent of the estimated contract or order value (including options) of the bundled requirements.
- (7) Notwithstanding paragraphs (1) through (5) of this subsection, the FAA Acquisition Executive (FAE) may determine that bundling is necessary and justified when:
- (a) The expected benefits do not meet the thresholds for a substantial benefit but are critical to the agency's mission success; and
 - (b) The acquisition strategy provides for maximum practicable participation by small business concerns.
- (8) In assessing whether cost savings and/or price reduction would be achieved through bundling, the FAA shall:
- (a) Compare the price that has been charged by small businesses for the work that they have performed; or
 - (b) Where previous prices are not available, compare the price, based on market research that could have been or could be charged by small businesses for the work previously performed by other than a small business.

(9) If a determination is made that bundling is necessary and justified, the contracting officer shall include its justification in the procurement planning documents and provide it to the FAA's Small Business Program (AAP-20~~-upon request-~~). The justification must include:

- (a) The specific benefits anticipated to be derived from substantial bundling;
- (b) An assessment of the specific impediments to participation by small business concerns as contractors that result from substantial bundling;
- (c) Actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;
- (d) Actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;
- (e) The determination that the anticipated benefits of the proposed bundled contract or order justify its use; and
- (f) Alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

(10) All determinations that bundling is necessary and justified, with exception to paragraph (7) of this subsection, require the final approval of the FAE. Contracting officers shall submit the justification, which shall include the required information listed in (a) through (f) of paragraph (9) of this subsection, to the FAE. The FAE shall approve the bundling only if the FAE makes the independent determination that the bundling satisfies the requirements of this subsection.

(11) Upon FAE approval, the service team shall inform the Administrator of the contract bundling and provide to the Administrator the justification described in paragraph (10) of this subsection.

(12) Bundling does not apply to a contract that will be awarded and performed entirely outside of the United States.

e. For a guide to aid in the determination of the whether the use of consolidation and bundling is proper, see the Decision Flowchart – Contract Consolidation and Bundling located in Procurement Tools and Resources.

7 Mentor-Protégé Revised 7/2021

a. Definitions.

(1) **SMALL DISADVANTAGED BUSINESSES (SDB)**, as used in the Mentor-Protégé Program, means small business concerns owned and controlled by socially and economically disadvantaged individuals as defined by the Acquisition Management System (AMS).

(2) **HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU)** means institutions determined by the U.S. Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

(3) **MINORITY EDUCATIONAL INSTITUTIONS (MI)** means institutions verified by the U.S. Secretary of Education to meet the criteria set forth in 34 CFR 637.4. MIs include Hispanic-serving institutions as defined by 20 USC 1059c (b)(1).

(4) **ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS (EDWOSB)** has the same definition as “Economically Women-Owned Small Business concern” in Appendix C of AMS Policy

(5) **WOMEN-OWNED SMALL BUSINESS (WOSB)** has the same definition as “Women-owned small business concern eligible under the women-owned small business program” in Appendix C of AMS Policy.

(6) **SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDVOSB)** is a small business concern that is 51% owned and controlled by a service-disabled veteran(s).

(7) **HIGH-TECH**, as used herein means research and/or development efforts that are within or advances the state-of-the-art in technology discipline and are performed primarily by professional engineering, scientists, and highly skilled and trained technicians or specialists.

(8) **SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESS (SEDB)** is a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals.

(9) **SMALL BUSINESS (SB)** is a business, including its affiliates, that is independently owned and operated and not dominant in producing the products or performing the services being purchased, and one that qualifies as a small business under the Federal Government's criteria and North American Industry Classification System (NAICS) Code size standards.

b. *Purpose.*

The FAA Mentor-Protégé Program is designed to motivate and encourage firms to assist Small Businesses (SB), preferably Socially and Economically Disadvantaged Businesses (SEDB), Small

Disadvantaged Businesses (SDB), Service-Disabled Veteran-Owned Small Business (SDVOSB), Historically Black Colleges and Universities (HBCU), and Minority Institutions (MI), Economically Disadvantaged Women-Owned Small Businesses (EDWOSB) and Women-Owned Small Businesses (WOSB), enhancing their capabilities to perform FAA prime contracts and subcontracts, foster long-term business relationships between these entities and Mentor Firms, and increase the overall number of these entities that receive FAA prime contract and subcontract awards. The "Mentor-Protégé Program Guide" may be obtained from the Small Business Program (AAP-20) staff.

c. Incentives for Mentor Participation.

- (1) Mentors may receive additional evaluation points (for Mentor-Protégé Program participation) toward the award of contracts during the evaluation of competitive offers.
- (2) Mentors may receive credit toward attaining subcontracting goals contained in their FAA subcontracting plan(s) for Mentor-Protégé participation.
- (3) Costs incurred by a mentor to provide developmental assistance (i.e., technical or managerial) described in Section 1.12 are allowable as indirect costs (appropriate documentation must be provided) unless the contract contains a line item specifically for the Mentor-Protégé Program. A ceiling on allowable developmental costs must be established at time of contract award.
- (4) Procurements may be set-aside exclusively for competition among firms that are participants in the FAA Mentor-Protégé Program.

d. Review and Approval on Mentor-Protégé Application and Agreement.

- (1) The Mentor-Protégé application and agreement is reviewed by AAP-20. The review should be completed no later than 30 days after receipt. AAP-20 should provide a copy of the submitted information to the cognizant FAA service team and Contracting Officer for a parallel review and concurrence.
- (2) Upon approval of the agreement, the mentor may implement the developmental assistance program.
- (3) An approved agreement must be incorporated into the mentor or protégé firm's award (for example: a contract, blanket purchase agreement, purchase order, memorandum of agreement, memorandum of understanding, etc.). It should be added to the subcontracting plan in contracts which contain such a plan.
- (4) If the application is disapproved, then the mentor may provide additional information for reconsideration. The review of any supplemental material should be completed within 30 days after receipt by AAP-20. Upon finding deficiencies that FAA considers correctable, AAP-20 should notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

e. Additional Mentor-Protégé Program guidance is located on the AAP-20 website.

8 Joint Ventures Revised 9/2021

a. *Small Business Exception to Affiliation.* A joint venture of two or more business concerns may submit an offer as a small business without regard to affiliation provided that each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(1) The procurement qualifies as a “bundled” requirement; or

(2) The procurement does not qualify as a “bundled” requirement, and:

(a) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(b) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds \$10 million.

b. *Mentor-Protégé Exception to Affiliation.* A joint venture between a protégé firm and its approved mentor will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement. FAA approved Mentor-Protégé Program joint ventures are acceptable and/or Small Business Administration approved Mentor-Protégé Program joint ventures are acceptable.

c. *Subcontracting Limitations.* The subcontracting limitations specified in AMS Clauses 3.6.1-7, Limitations on Subcontracting and 3.6.1-12 Notice of Service-Disabled Veteran Owned Small Business Set-Aside, are applicable to Small Business Joint Ventures. A joint venture awarded a contract as a prime contractor must perform work according to the conditions and percentages detailed in AMS Clause 3.6.1-7 or 3.6.1-12 as applicable.

d. *Socially and Economically Disadvantaged Businesses (SEDB(8(a)) Exception to Affiliation.*

(1) If approved by the Small Business Administration (SBA), 8(a) participants may enter into joint venture agreement with one or more small business concerns, whether they be 8(a) participants or not, for the purpose of performing a specific 8(a) contract.

(2) A joint venture of at least one 8(a) concern and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement as long as each are considered small under the size standard corresponding to the NAICS code assigned to the SIR, provided:

(a) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the NAICS code assigned to the contract; and

(b) For a procurement:

(i) Having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract;

or

(ii) Having an employee-based size standard, the procurement exceeds \$10 million.

(3) For single source and competitive 8(a) procurements that do not exceed the dollar levels identified above, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the 8(a) SIR or contract.

(e) *Service-Disabled Veteran Owned Small Businesses (SDVOSB) Exception to Affiliation.*

(1) An SDVOSB may enter into a joint venture agreement with one or more other small business concerns for the purpose of performing an SDVOSB contract.

(2) A joint venture of at least one SDVOSB and one or more other business concerns may enter submit an offer as a small business for a competitive SDVOSB procurement, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the SIR, provided:

(a) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(b) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

(3) For noncompetitive and competitive SDVOSB procurement that does not exceed the dollar level identified above, an SDVOSB entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the SDVOSB contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVOSB SIR or contract.

9 Tiered Evaluations 1/2021

Refer to AMS guidance on tiered evaluations at T3.2.2.3B.7 for more information.

B Clauses Revised 10/2006

[view contract clauses](#)

C Procurement Forms Revised 9/2021

Document Name

D Procurement Samples Revised 9/2021

Document Name

Master Subcontracting Plan

E Procurement Templates Added 9/2021

Document Name

Small Business Set-Aside Determination and Coordination

F Procurement Tools and Resources Revised 10/2021

Document Name

Small Business Set-Aside Determination and Coordination Process Flowchart Decision Flowchart – Contract Consolidation and Bundling

G Appendix Revised 10/2021